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Day of General Discussion on article 3 of the Covenant: equal right of men and women to the enjoyment of economic, social and cultural rights set forth in the ICESCR

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RE/CONCEIVING THE HUMAN RIGHT TO HOUSING*

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* Issued as submitted.

** The views expressed in the present document are those of the author and do not necessarily reflect those of the United Nations. Ms. L. Farha works, researchers and publishes in the area of women's economic, social and cultural rights, particularly on the rights to housing, land and property.

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Introduction

1. The right to housing is one of the most considered human rights in the International Covenant on Economic, Social and Cultural Rights (hereinafter ICESCR).[1] Much of the foundational analysis and work pertaining to this right was produced in the late 1980s through to the mid 1990s.[2] During this period, the United Nations Committee on Economic, Social and Cultural Rights (hereinafter "CESCR")[3] adopted two General Comments on housing rights, and several resolutions pertaining to this right were adopted by the United Nations Charter based bodies: the Sub-Committee on the Protection and Promotion of Human Rights,[4] the Commission on Human Rights[5] and the Commission on Human Settlements.[6] Moreover, a Special Rapporteur on housing rights was appointed[7] while a number of articles, chapters, and expert meetings on different aspects of the right to housing emerged during this period.[8]

2. From a women's human rights perspective this period of activity on the right to adequate housing is marked by two central characteristics. First, United Nations officials, and human rights advocates - whether focused on economic, social and cultural rights or women's rights - were reluctant to include in their work a conceptualization of housing rights which incorporated women's perspectives. Second, and perhaps as a result, women's housing needs and experiences were not being reflected in the "gender neutral" documents adopted by the United Nations. In retrospect, this is not surprising given that, on the one hand, the economic, social and cultural rights field was and continues to be dominated by men, who only rarely demonstrate an appreciation of women's experiences as they relate to human rights. For instance, at no time has the 18-member CESCR had more than three women members and the Committee's work has only occasionally reflected a deep understanding of women's economic, social and cultural rights.[9] Similarly, until recently, the housing rights advocates working at the international level were predominantly men, as were most of the economic, social and cultural rights advocates who attended the CESCR sessions.[10] In keeping with this, the bulk of the work and literature on economic, social and cultural rights produced by non-governmental organizations (hereinafter "NGOs") pays scant attention to women's experiences in this field. On the other hand, the women's human rights advocates at the international level were principally concerned with and occupied by the struggle to convince the international community that women's rights are human rights. Focused on a cautious agenda of engendering civil and political rights, these advocates had little time or inclination to turn their attention to economic, social and cultural rights, which were still perceived as "second generation" rights, ill-defined and largely injusticiable.

3. It was in this milieu that I first started working to articulate and incorporate women's experiences and needs at the domestic level into legal standards on the right to housing at the international level. This work has been motivated by the belief that for the human right to housing to be meaningful to women it must be analysed and articulated from women's perspectives. This paper provides an analysis of what this means in both theory and practice. Part I highlights the importance of incorporating a substantive understanding of women's equality rights into the content of the right to housing. The second part of the paper provides an overview of how the right to adequate housing has been defined in international law, focusing on the articulation of the right to housing and the constituent right to be free from forced eviction as found in the CESCR's General Comments 4 and 7, considered the foremost legal authority on these rights. These articulations of the right to housing are then analysed from the standpoint of

women's experiences, concluding with suggestions as to how the right to housing and to be free from forced eviction might be defined if women were at the centre of its development. The paper concludes with a modest suggestion regarding the strategic way forward to ensure the international human right to housing has meaning and resonance for women.

PART I. DISCRIMINATION, EQUALITY RIGHTS AND HOUSING RIGHTS

4. In every realm - civil, cultural, economic, political, legal and social - whether in private or public domains, women experience structural discrimination and inequality. This is particularly so with respect to housing. The gendered construct of social and economic relations within and outside the household means that women are discriminated against and experience inequality in virtually every aspect of housing, be it access to rental accommodation and credit and loans for homeownership, policy development, control over household resources, prescribed household roles, rights of inheritance or the construction of housing. Therefore, a useful starting point to ensure that the rights found in the ICESCR,[11] such as the right to adequate housing, are meaningful to women is to incorporate, within their content, rights to equality and to non-discrimination based on sex.

5. This starting point was, in fact, contemplated by the framers of the ICESCR and is reflected in its provisions. The ICESCR contains complementary and interrelated articles dealing with women's right to be free from discrimination[12] and the equal right of women to the enjoyment of all rights contained in the ICESCR.[13] The Covenant does not provide a definition of discrimination and equality and the CESCR has yet to adopt a General Comment to this effect. Until it does, these concepts are best understood by reference to the authoritative pronouncements of other international human rights bodies such as the United Nations Human Rights' Committee (the HRC), which monitors compliance with the ICCPR. Drawing on the HRC's *General Comment 18*,[14] it can be stated that discrimination and inequality occur when a distinction, exclusion, restriction or preference based on any enumerated ground in the ICESCR - race, colour, *sex*, language, religion, political or other opinion, national or social origins, property, birth or other status – is made which has the effect of nullifying or impairing the recognition, enjoyment or exercise by all persons, on an equal footing, of the rights contained in the ICESCR.[15]

6. Discrimination and inequality can occur in different ways. The most obvious form of discrimination that results in inequality is when a law, policy or practice blatantly excludes or restricts a protected group or prefers and distinguishes between people based on an enumerated ground. In the housing field one of the most notorious laws falling into this category of discrimination was the *Group Areas Act* (1950) of Apartheid South Africa. On its face this law segregated communities based on race and relegated the black population to a minor percentage of the nation's land. The language of the *Act* as well as its purpose and effect was discriminatory. But Discrimination is not always this blatant. In particular, discriminatory effects are often obscured by the ostensibly non-discriminatory language of a law, policy or practise. For example, with respect to homeownership in Canada, a federal government housing corporation and the main banks adhere to a "gender neutral" policy whereby the insurance required for a house mortgage (when less than 25% of the cost of the house is provided as a deposit) will only be provided if the buyer will spend less than 32% of their income on debt-servicing. While this may appear to be a neutral policy in the sense that the 32% rule applies to

all people who put down a deposit of less than 25% of the cost of the house, in effect it is not neutral because women are generally poorer than men and thus more likely to require loan insurance and more likely to be spending more than 32% of their income on debt servicing. In this way, a policy that is non-discriminatory in its language can still be regarded as discriminatory because of its effects.

7. In the example of the 32% rule, the discrimination arises not because women are treated differently in the language of the rule but because they are situated differently in the world in which the rule operates. If the different situation of women was not taken into account in defining discrimination and equality then women, not to mention other disadvantaged groups, would only enjoy what has been called formal equality. That is, they would be equal only in the sense that they would be treated in the same way that men are treated. To the extent that women and men are identically situated in the world, being treated equally is, of course, important. However, to the extent that women are situated differently in the world and, in particular, are often disadvantageously situated, a merely formal conceptualization of equality - treating women in the same way that men are treated on the basis that men and women are the same[16] - is insufficient. Rather, "in those circumstances where women and men are not identically situated, which is most of the time"[17] a substantive conceptualization of equality is necessary. Substantive equality recognizes that equality is not a matter of "superficial sameness and difference"[18] rather it is about the "accommodation of differences".[19] It understands that women as a group are disadvantaged, and that equality must address the economic, social, legal and political dimensions of that group disadvantage.[20] Consequently, adopting a substantive conceptualization of equality means not only that inequality exists when gender-neutral laws, policies or practices have differential negative effects on women, but also that inequality exists when the differential disadvantage of women is not addressed by laws, policies or practices. As a result, substantive equality may require positive obligations on behalf of States to address needs related to disadvantage.[21] For example, for women's equality with respect to home ownership to be realized in the face of the 32% rule, outside of eliminating the rule, the government would be required to undertake positive steps. These might include establishing other homeownership programmes for women who cannot meet the 32% rule, or they would be obliged to subsidize women's debt servicing such that she would not be paying more than 32% of her income on her mortgage and insurance.

8. Therefore, for the non-discrimination and equality rights included in the ICESCR to have real-world significance for women, the concepts of discrimination and equality need to be conceptualized substantively, rather than merely formally. If this is done, and if the right to housing is conceptualized to encompass the rights to non-discrimination and to equality, then the right to housing can be defined in a way that underscores its applicability to women. In combination, these conceptualizations provide a framework which requires a focus on women's lived experiences and a consideration of women's economic, social, legal and political position in its application. Using this framework we can better understand, for example, how discriminatory laws, policies, customs and tradition that prevent women from inheriting housing, land and property and deny women access to credit and loans necessary to secure and maintain housing,[22] deprive women of the right to housing.

9. Apart from rendering the right to housing more responsive to the situation of women with respect to housing, adoption of this framework also has the potential to force governments to be more responsive to that situation. This is because, according to international law, the discrimination and equality rights provisions of the ICESCR (articles 2(2) and 3) are not subject to progressive realization but must be implemented immediately.[23] This means, therefore, that States Parties to the ICESCR have obligations under articles 2(2) and 3 to *immediately* respect and protect and fulfill women's right to equality. Because the denial of women's economic, social and cultural rights is inextricably linked with discrimination against women and women's inequality, this provides the CESCR with a legal foothold to have violations of women's economic, social and cultural rights put at the forefront of any review of a State party. It also provides NGOs with a legal foothold to demand of their government's the immediate implementation of women's economic, social and cultural rights.

PART II. IS THERE A WOMAN IN THE HUMAN RIGHT TO ADEQUATE HOUSING ?

10. The principal codification of the international right to adequate housing is contained in article 11(1) of the ICESCR which states:

> The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions ...

Although the right to housing appears in other treaties,[24] this articulation is particularly important. Not only is the ICESCR one of the three legal instruments contained in the International Bill of Rights, but also the bulk of the work at the international level pertaining to the right to housing has been based on this articulation of the right. For example, the United Nations Committee on Economic, Social and Cultural Rights (CESCR) - responsible for examining the degree to which countries that have ratified the ICESCR have undertaken the implementation of the rights found therein - is the only treaty monitoring body that has devoted significant attention to articulating the content of the right to housing in its General Comments. General Comment 4 is now recognized as the most authoritative legal interpretation of the right to adequate housing at the international level.[25] General Comment 7 focuses on the practice of forced eviction as a gross violation of human rights, particularly housing rights. Of all the treaty monitoring bodies, the CESCR has also shown the most sustained and explicit commitment to the right to housing in its review of State party compliance with the Covenant. This is reflected in a number of the Committee's Concluding Observations which often refer to the status of housing rights.[26]

11. Though due attention has been paid to the right to housing in international law, considerably less attention has been devoted to the meaning of the right to housing for women. Perhaps this is due - at least in part - to the male-specific language of article 11 (1) which in one fell swoop assumes that all women cohabit with men, rendering women's housing rights invisible.[27] In its General Comment 4, the CESCR has attempted to address this:

> The right to adequate housing applies to everyone. While reference to "himself and his family" reflects assumptions as to gender roles and

> economic activity patterns commonly accepted in 1966 when the Covenant was adopted, the phrase cannot be read today as implying any limitation upon the applicability of the right to individuals or to female-headed households, or other such groups. Thus, the concept of "family" must be understood in a wide sense. Further, individuals, as well as families, are entitled to adequate housing regardless of age, economic status, group or other affiliation or status and other such factors. In particular, enjoyment of this right must, in accordance with article 2.2 of the Covenant, not be subject to any form of discrimination.[28]

This paragraph indicates that the Committee recognizes that a male-specific approach to housing rights is inappropriate and that the right to housing extends to everyone, even women (or at least female-headed households). A commitment to extending the right to housing to everyone without discrimination is essential if women are ever to enjoy the right. The implementation of this commitment will determine the extent to which women are actually able to claim the right to housing. In particular, and as should be evident from the preceding section, it is crucial that this commitment incorporate a substantive conceptualization of equality. Unfortunately, the CESCR has had some difficulty with the full implementation of this commitment in some of its own work and, more specifically, has yet to explicitly express a commitment to substantive equality in its interpretation of the right to housing. A closer examination of the Committee's interpretations of the right to housing in its General Comments reveals the weaknesses in its approach from women's perspectives.

General Comment 4

Overview

12. General Comment 4 attempts to adopt a "gender-neutral" and de-contextualized approach to housing rights. Except for the reference in paragraph 6 to "female headed households", at no time does the Comment actually mention women. The General Comment begins with an articulation of some of the fundamental principles underlying the right. The Committee indicates that the right to housing must be understood in a broad sense to include more than just the right to four walls and a roof, and should be understood as the right to live somewhere in security, peace, and dignity.[29] The Comment also notes that the right to housing is integrally linked to other human rights such as the right to participate in public decision-making and the right not to be subjected to arbitrary interference with one's privacy, family, home or correspondence.[30] In keeping with the "inherent dignity of the human person", housing rights should be ensured to all persons irrespective of income or access to economic resources.[31]

13. The heart of the Comment is the discussion of the constituent elements of "adequate" housing: (a) legal security of tenure; (b) availability of services, materials, facilities, and infrastructure; (c) affordable; (d) habitable; (e) accessibility; (f) location; and (g) culturally adequate.[32] The Comment then suggests several ways in which governments might meet their obligations to achieve the full realization of the right to adequate housing. For example, governments should adopt a national housing strategy,[33] and should engage in effective monitoring to ascertain the full extent of homelessness and inadequate housing and to provide

detailed information about the most vulnerable and disadvantaged with respect to housing, in particular, "homeless persons and families, those inadequately housed and without ready access to basic amenities, those living in "illegal" settlements, those subject to forced evictions and low income groups".[34]

14. The Comment draws to a close by identifying component elements of the right to adequate housing which are consistent with the provision of domestic legal remedies, highlighting in particular legal actions related to forced evictions, discrimination in housing, inadequate housing conditions and increased levels of homelessness.[35] On the topic of forced evictions, the Committee states that "instances of forced evictions are prima facie incompatible with the requirements of the Covenant and can only be justified in the most exceptional circumstances and in accordance with the relevant principles of international law".[36]

Analysis

15. One of the most striking features of General Comment 4 is that despite its stated commitment to non-discrimination and the extension of the right to housing to everyone including women, the Comment fails to reflect and incorporate this commitment in the articulation of other aspects of the content of the right. This is not to say that the articulated principles in the General Comment discriminate against women or explicitly exclude women.[37] Rather, perhaps as a result of its efforts to be universally applicable - and hence gender neutral and de-contextual - the Comment appears to ignore women. The exclusion of any direct references to women in the General Comment is particularly surprising when considered in light of what the Comment does say. For example, at paragraph 13, given the overwhelming number of obstacles that prevent women as a group and class from accessing housing as well as from adequate housing,[38] and which violate women's housing rights, it is startling that the framers fail to include women as an overarching group as well as the most disadvantaged group in the list of disadvantaged groups in the area of housing. Similarly, though the Comment explicitly refers to legal complaints against racial discrimination in housing it fails to explicitly mention sex discrimination in the same context.[39] While the Comment rightly proposes that the right to housing is inextricably linked with other human rights, it fails to link housing rights with rights that might be regarded as particularly relevant to women, such as those contained in CEDAW for example. It also fails to provide any analysis of the complexities of this proposition for women. For example, the Committee asserts that privacy rights are a very important dimension in defining the right to housing, and yet for women the privacy and sanctity of the home under human rights law can be used to obscure the violence that women so often suffer therein.

16. Even in the more detailed and specific aspects of the General Comment, for example in the paragraphs dealing with the seven elements required of "adequate" housing, women fail to make an appearance.[40] For example, in its discussion of housing *affordability,*[41] the Comment suggests that States parties should establish housing subsidies for those unable to obtain affordable housing, without ever mentioning that these subsidies will be particularly relevant for women who constitute the poorest in society and that these subsidies must be allocated in a manner that does not discriminate against women (as so often subsidy allocations do because they are provided to the head of household who is presumed to be male) and that gives priority to particular groups of women in acute need. In its discussion of the *habitability*[42] of housing, the Comment refers to the necessity that housing protect people from the elements and that it protect

the physical safety of inhabitants. It fails, however, to consider the mental health of inhabitants and related dangers that might threaten the physical safety of occupants, such as domestic violence. The Comment does not fare better in its definition of *accessibility*. Women are excluded from the list of disadvantaged groups requiring special housing needs, in particular resources for adequate housing.[43] Moreover, the very particular barriers to accommodation experienced by women, due among other things to women's poverty, discrimination against women in laws, policies, customs and traditions, are not addressed at all.

17. Of course, it could be argued that the broad principles of General Comment 4, in its present form, can be interpreted so as to include women's experiences. Indeed, some support for this argument exists in the Committee's emerging willingness to examine women's housing conditions in its review of State party compliance with the Covenant. In fact, they have already taken some steps in this direction. A review of the Committee's Concluding Observations over the last 5 years reveals that the Committee has periodically criticized State parties under articles 2 and 3 for discrimination against women in the housing sphere.[44] Beyond this, on at least one occasion, the Committee has demonstrated a willingness to examine a State party's compliance with the right to adequate housing from women's perspectives. In its review of Canada in November 1998, the Committee considered women's particular housing and living conditions in its assessment of Canada's compliance with article 11(1) of the ICESCR. In their Concluding Observations the Committee states:[45]

> 28. The Committee is concerned that the significant reductions in provincial social assistance programmes, the unavailability of affordable and appropriate housing and widespread discrimination with respect to housing create obstacles to women escaping domestic violence. Many women are forced, as a result of those obstacles, to choose between returning to or staying in a violent situation, on the one hand, or homelessness and inadequate food and clothing for themselves and their children, on the other …

18. Though this type of analysis does not commonly appear in the Committee's Concluding Observations - in this case it was the result of Canadian non-governmental organizations' lobbying efforts - the Committee demonstrates that it is open to an interpretation of the right to adequate housing that incorporates women's substantive experiences of inequality in the housing sphere. This openness suggests that women can look to the ICESCR, and particularly article 11(1), for protection and promotion of substantive equality with respect to housing. In turn, it supports the argument that the shortcomings with respect to women's experiences in the text of the General Comment do not preclude attention to those experiences in applying that text.

19. While this may be true, as previous experiences in the human rights realm and elsewhere indicate, unless women's experiences are named and unless principles and rights are articulated in a way that address women's specific experiences, women will remain invisible, their human rights illusory. In other words, laws and legal interpretations such as this General Comment must be specific and explicit with respect to women's experiences and needs if claiming the right to housing is to be an effective recourse for women.

20. For the right to housing to take on real relevance for women, however, it may be necessary to move beyond the confines of General Comment 4 to a re-formulation of the

fundamental principles informing housing rights where women are at its centre. Given the importance of housing in women's lives, the distinctive relationship between women and housing,[46] and the fact that for many women worldwide housing is the only sphere in which they interact, placing women at the centre of an understanding of housing rights makes good sense. The effect of doing so forces a shift in the basic principles underlying the right to housing. This is not to say that those principles articulated in the General Comment 4 would be rendered irrelevant, but rather they would have to be further contextualized by women's lives. At the same time, new principles would emerge. The division of labour and its bearing on women's relationship to housing would have to be acknowledged. Women's experiences of violence in the home would undoubtedly inform the general principles as well as the "adequacy" requirements of the Comment. The many barriers to accessing and maintaining accommodation faced by women would be challenged. The relationship between women's poverty and women's housing would be acknowledged and a housing rights principle would be developed to address it.

21. As it stands, there is only a remote chance that in the near future the Committee on Economic, Social and Cultural Rights will re-write General Comment 4 to better reflect women's experiences and needs, especially since they have yet to adopt a General Comment on Women and the ICESCR. And so, in the immediate future we can encourage the CESCR to infuse their current understanding of the right to adequate housing with an understanding of substantive equality and thus women's actual experiences. To assist in imagining how the General Comment could be read if it were to be more relevant to women, the table in Appendix A reformulates elements of adequacy using women's experiences.[47]

Forced Eviction: General Comment 7

Overview

22. The right to be free from forced eviction has emerged as one of the central tenets of the right to housing. Since the early 1990s the CESCR has devoted a substantial amount of time and energy on this issue. General Comment 4 refers extensively to the issue of forced evictions, identifying security of tenure as the cornerstone of the right to adequate housing and declaring that forced evictions are prima facie incompatible with housing rights. On a number of occasions the CESCR has also issued letters of concern urging State parties to re-consider carrying out planned forced evictions[48] and the CESCR has consistently investigated allegations of pending or past forced evictions in its reviews of State parties.[49] In fact, on two occasions, the CESCR visited countries where forced eviction was identified as an acute problem, in an effort to encourage the State parties in question to comply with the ICESCR.[50] In keeping with this commitment to curtailing the practice of forced evictions, in June 1997, the CESCR adopted General Comment 7 on forced evictions.[51]

23. In international law, the practice of forced eviction has been defined to refer most commonly to instances where masses of people are involuntarily removed from their homes or lands as a result of: development projects, city beautification projects, occupation, and armed conflicts, internal strife or war. For example, in the slums of Bangkok, Thailand, an average of 5 demolitions occur each month, as a means of "cleaning" the streets. In a number of countries such as Turkey, Burma and Palestine, homes of minority populations are regularly demolished by occupying powers as a means of controlling land and power. And across parts of Africa and

south Asia, large-scale hydro-electrical and other dam projects continue to result in the forcible eviction of hundreds of thousands of dwellers, commonly indigenous peoples. With these types of evictions in mind, the CESCR's General Comment 7 defines forced evictions as follows:

> [T]he permanent or temporary removal against their will of individuals, families and/or communities from the homes and/or land which they occupy, without the provision of, and access to, appropriate forms of legal or other protection. The prohibition on forced evictions does not, however, apply to evictions carried out by force in accordance with the law and in conformity with the provisions of the International Human Rights Covenants.[52]

As in the case of General Comment 4 on housing rights, General Comment 7 notes that forced evictions frequently violate other human rights, such as the right to life, the right to security of the person, the right to non-interference with privacy and family and home and the right to the peaceful enjoyment of possessions.[53]

24. Much of the work on forced evictions at the international level has focused on a determination of the procedures and measures that should be required by human rights law at all stages of the forced eviction process, an issue discussed in General Comment 7. As a starting point, the CESCR asserts that the State must refrain from forced evictions and ensure that the law is enforced against its agents or third parties who carry out forced evictions.[54] To this end, States must ensure they have enacted legislation against forced evictions. This legislation should include measures providing the greatest legal security of tenure to occupiers of houses and land and should restrict and control the circumstances under which evictions may be carried out.[55]

25. General Comment 7 also outlines a number of requirements that States must meet prior to an eviction, such as exploring all feasible alternatives in consultation with those potentially affected (especially in the case of large scale evictions).[56] In the event that forced eviction is deemed absolutely necessary, the CESCR calls on State parties to ensure appropriate procedural protection and due process for those affected. The CESCR also stipulates that forced eviction should never result in rendering people homeless or vulnerable to violations of other human rights. Where those affected cannot provide for themselves, State parties must take all appropriate measures to ensure that adequate alternative housing or resettlement is available.[57] And then, to ensure that State parties are meeting their obligations regarding forced evictions under the ICESCR, the CESCR asks State parties when reporting to the Committee to provide them with information pertaining directly to the practice of forced evictions, such as the number of persons evicted within the last five years and the number of persons currently lacking legal protection against arbitrary eviction or any other kind of eviction and any legislation relating to forced evictions.[58]

Analysis

26. In documents pertaining to forced eviction, it is not uncommon to read that women are the most affected by this practice. For example, General Comment 7 states, "[w]omen, children,

youth, older persons, indigenous people, ethnic and other minorities, and other vulnerable individuals and groups all suffer disproportionately from the practice of forced eviction ...".[59] Despite this admission, the right to be protected against forced eviction has evolved at the international level with little attention to women's experiences and roles in resisting and coping with this practice.

27. Insight into this exclusion was first gleaned in exploratory discussions with colleagues about the idea that domestic violence could be understood as a form of forced eviction. This idea was repeatedly met with hostility. Some argued that the coercion to leave the home experienced by women in situations domestic violence is not sufficient to constitute *forced* eviction, and others relied on traditional (and outdated) legal arguments that international human rights law cannot reach into the private realm of the home.

28. The male-centric view of the right to be free from forced evictions has meant that causes of eviction that are unique to women - domestic violence, discriminatory ownership and inheritance laws, customs and traditions, and cutbacks to social assistance entitlements all of which can result in women involuntarily leaving their homes - have yet to be explicitly identified as falling within the ambit of forced eviction under international human rights law. General Comment 7 takes a step in this direction. At paragraph 10 it states:

> ... Women in all groups are especially vulnerable given the extent of statutory and other forms of discrimination which often apply in relation to property rights (including home ownership) or rights of access to property or accommodation, and their particular vulnerability to acts of violence and sexual abuse when they are rendered h[illegible]eless. The non-discrimination provisions of articles 2.2 and 3 of the Covenant impose an additional obligation upon Governments to ensure that, where evictions do occur, appropriate measures are taken to ensure that no form of discrimination is involved.

This reference to ownership laws, customs and traditions pertaining to inheritance, however, is mentioned almost in passing and coupled with a comment on the violence women are exposed to in the post eviction context, failing to mention the violence within the home that forces the eviction of so many women.[60]

29. The recognition that women suffer disproportionately from the practice of forced eviction is not translated or reflected in any other part of the General Comment. For example, in its discussion of those instances where eviction is considered to be justified, the Committee draws on Article 17 of the International Covenant on Civil and Political Rights (ICCPR) and its General Comment 16 which states that interference with a person's home can only take place "in cases envisaged by the law".[61] The protection of the home from outside forces or agents is a complicated issue from women's perspectives. On the one hand, such protection is important to women, especially during situations of armed conflict. At the same time, as discussed previously, the protection of the home or its insulation from public view, can create conditions that allow household violence to flourish. Moreover, in many instances those who might in other circumstances "protect" the home are the very persons who pose a threat to women's physical security and bodily integrity, particularly during armed conflict.

30. Of course, these critiques of the development of the law on forced eviction are limited because they merely insert women into an existing framework. What happens to our understanding of forced eviction if we move away from women's particularity and place women at the very centre of a discussion on forced eviction? In a list-serve discussion on women and forced eviction one subscriber suggested that if we focus on what is distinct or particular to women, there is a presupposition that

> forced eviction is an attack on "the community", and usually a fight between men, with the home and often the woman herself seen as male property to be destroyed. In this scenario, the woman is at best an adjunct to men or else something that just happens to be in the way in a struggle between men and their categories of importance eg. Wealth, status, ethnicity, religion. In this view, forced eviction is just one more area of struggle and violation that affects "all people" (for which we can read "the community with a male political face"), and gender is relegated to something "particular", a subset of experience within a greater and somehow "neutral" whole.[62]

31. Of course, one might ask, why should the group "women" be at the centre of an analysis or discussion of the practice of forced eviction, rather than all those affected including children, older persons and men? The answer lies in an understanding of the practice itself. To begin, forced eviction does not happen on a whim; it is a strategic practice, one that likely has women as its aim and as a focus. As is obvious, forced eviction most often targets the home which, as discussed earlier, for many women is the primary site of their existence. Is it by mere chance that a violent practice aimed squarely at the home has emerged as a weapon in war and development or has the fact that the home is such a vulnerable site - because it is women's site - informed the evolution of this practice? Similarly, what can be made of the fact that in many regions forced evictions are carried out in the middle of the day when most men are at work and women are alone at home with their children?[63] The subscriber to the Eviction Women list serve provides an eloquent synthesis of these thoughts:

> ... what happens when you stop looking at forced eviction as an outrage or merely happenstance and instead consider that in forced eviction everything is going perfectly right, as planned and desired by someone. From this perspective, gender becomes entirely central, and even generative. That is, gender actually produces an impetus for forced eviction.
>
> As I read [the] piece about Burma, my mind kept coming back to the image of the woman cowering in her home, waiting alone or with her children for "her turn". Why, I asked myself, are the men not there too; where are they able to go that the women are not? And why, I asked myself, are the women unarmed?

Yes, I am taking the radical step of suggesting that women are the focus of forced eviction, and that traditional gender organization makes forced eviction more likely as a strategy of aggression. Gender organization, in other words, shapes and determines the manifestations of power. It is difficult for us to see this because imbalanced gender relations are so universal and long-standing that we overlook how productive and active they continue to be: instead, we see women as the (mere) victims of the aggression.

If the enemy conceives of you as the man's property, and, if a single woman, then as of no importance, this does not mean his fight is with the man only. Instead, what it means is that he is aware of, understands, and reinforces your gender status. His strategy is entirely cognizant of your gender status and/or the way in which your violation will humiliate your male "owner". This fact does not make you peripheral; rather, it makes you, to repeat, absolutely central.

The same analysis applies if the violation is to the physical structure of the home; by depriving the man of the physical structure for the institutionalization of his marriage and thereby his relation to you, you are not peripheral or particular to this drama, but central.

Similarly, if you are a woman bringing up your children on your own, your status as such draws the enemy to you and encourages the phenomenon of forced eviction.

Some may argue that this emphasis on women seems paranoid and self-important. However, it is only paranoid and self-important if you accept the idea of women's "particularity" and therefore relative unimportance. I am suggesting that women only function as particularity, as a subset, but that that function is, however, crucial to the social dis/order and to all manifestations of power.

I am attempting in this analysis to reinforce gender as a primary structure underlying oppression and social phenomena and determining their shape and form. It is disturbing to me that we have to find what is "particular" and "distinct" to women in a strategy so rooted in familial and gender organization.

Conclusion

32. This excerpt is an appropriate place to close as it is raises both provocative and essential issues that must be considered in any effort to engender human rights. It suggests that in order for the right to housing and other economic, social and cultural rights to be meaningful to women, in the long run, we cannot simply return to existing international jurisprudence and insert women or women's experiences because the very premises upon which most of these documents are based ignore the broader social organization and order, and women's position

within that organization/order. And so, ours is an uphill struggle: to re-conceive housing rights and other economic, social and cultural rights in a way that both recognizes and challenges dominant social orders and gender roles. This task is that much more difficult in light of the fact that this work needs to be done in the here and now, when the social order and gender roles we aim to challenge remain in tact, all around us, everywhere. Using substantive equality to understand the right to housing as it pertains to women, would go some distance in ensuring that women's structural and systemic disadvantage with respect to housing is both recognized and addressed.

Notes

[1] As found in: *Human Rights: A Compilation of International Instruments*, Vol. I, First Part, (New York and Geneva: United Nations, 1994) at 8. Adopted and opened for signature, ratification and accession by General Assembly resolution 2200 A (XXI) of 16 December 1966, Entry Into Force: 3 January 1976, in accordance with article 27.

[2] See: David Hulchanski and Scott Leckie, *Chronology of Housing Rights* (Netherlands: Centre On Housing Rights and Evictions, 2000).

[3] The CESCR is responsible for monitoring State Party compliance with the ICESCR. The Committee also adopts legal interpretations of the provisions of the ICESCR in the form of "General Comments".

[4] For example, Resolution 1995/27, "*Promoting the realization of the human right to adequate housing*" (August, 1995), Resolution 1994/8, "*Children and the right to adequate housing*" (August, 1994), Resolution 1993/36, "*The Right to Adequate Housing*" (August 1993), Resolution 1992/26, "*Promoting the Realization of the Right to Adequate Housing*" (August 1992).

[5] Resolution 1988/24, "*The Realization of the Right to Adequate Housing*" (March 1988).

[6] Resolution 16/7, "*The realization of the human right to adequate housing" (May 1997), Resolution 14/6, "The Human Right to Adequate Housing*" (May 1993); Resolution 1988/24, "*The Realization of the Right to Adequate Housing*" (March 1988).

[7] The first Special Rapporteur on housing rights was appointed in 1992 by the Sub-Commission and the Promotion and Protection of Human Rights (Resolution 1992/26) and endorsed by the Commission on Human Rights in 1993 (Resolution 1993/103). His mandate extended until 1995. The Commission on Human Rights recently appointed a Special Rapporteur on Housing Rights as well, see: Resolution 2000/9, "*Question of the realization in all countries of the economic, social and cultural rights contained in the Universal Declaration of Human Rights and in the International Covenant on Economic, Social and Cultural Rights, and study of special problems which the developing countries face in their efforts to achieve these human rights*".

[8] For a list of publications on the right to adequate housing see: Centre on Housing Rights and Evictions, *Sources 2: Bibliography on Housing Rights and Forced Evictions,* 2d ed. (Netherlands: Centre on Housing Rights and Evictions, 2001).

[9] The number of women on the Committee now stands at two, representing 11% of the only international body charged with monitoring State implementation of economic, social and cultural rights. In its Concluding Observations on State Parties' compliance with the ICESCR, the Committee has attempted to address women's experiences, but this appears to occur in more of an ad hoc rather than systematic fashion. See: Marsha Freeman, *Equality and Rights: The International Covenant on Economic, Social and Cultural Rights, Article 3, Background Paper for the Proposed General Comment on ICESCR Article 3* (unpublished, on file with author, 2001).

[10] The CESCR meets twice or three times annually (April, November and sometimes in August) to review State Party compliance with the ICESCR, to adopt General Comments and to discuss particular issues of relevance to the Committee.

[11] The ICESCR codifies the rights to: work and associated trade union rights, social security, family protection, adequate standard of living, housing, food, health, education and culture.

[12] Article 2(2) states:

> The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

[13] Article 3 states:

> The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth in the present Covenant.

The interrelatedness of Articles 2(2) and 3 of the Covenant is derived from the fact that to discriminate is to treat people unequally. That these concepts are two-sides of the same coin is reflected in national constitutions and jurisprudence. For example, under the heading "Equality Rights", the *Canadian Charter of Rights and Freedoms* states at section 15 (1):

> Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

[14] Human Rights Committee, *General Comment 18* (1989), *Non-Discrimination*, HRI/GEN/1/Rev.3 (1997) at par. 29.

[15] *Ibid.* at par. 6-7.

[16] Formal equality is understood to work in situations where women want to be treated "the same" as men, such as with respect to the right to hold title to land and property, or the right to vote.

[17] Shelagh Day and Gwen Brodsky, *Women and the Equality Deficit: The Impact of Restructuring Canada's Social Programs*, (Ottawa: Status of Women Canada, 1998) at 43.

[18] Gwen Brodsky and Shelagh Day, "Women's Economic Inequality and the Canadian Human Rights Act" in *Women and the Canadian Human Rights Act: A Collection of Policy Research Reports* (Ottawa: Status of Women Canada, 1999) 113 at 135.

[19] *Andrews* v. *Law Society of British Columbia*, [1989]1 S.C.R. 143 as cited in Martha Jackman and Bruce Porter, "Women's Substantive Equality and the Protection of Social and Economic Rights Under the Canadian Human Rights Act" in *Women and the Canadian Human Rights Act, supra* note 18, 43 at 56.

[20] Shelagh Day and Gwen Brodsky, *Women and the Equality Deficit*, *supra* note 17 at 45.

[21] Martha Jackman and Bruce Porter, *supra* note 19 at 56.

[22] This may be because women, unlike men, are considered minors and require a male relative's consent for loan approval or it may because women's income is too low for a lending agent to be willing to guarantee the loan.

[23] *Maastricht Guidelines on Violations of Economic, Social and Cultural Rights*, 22-26 January, 1997 at 1 as at: <www.laaw.uu.nl/english/sim/instr/maastricht.asp>

[24] The right to housing is also codified in: The International Convention on the Rights of the Child (art. 27 (3)); The International Convention on the Elimination of All Forms of Discrimination Against Women (art. 14 (2) (h)); and The International Convention on the Elimination of All Forms of Racial Discrimination (Article 5 (e) (iii)).

[25] Committee on Economic, Social and Cultural Rights, *General Comment 4,* U.N. Doc. E/C.12/1991/4 (1991).

[26] Committee on Economic, Social and Cultural Rights, *Gen Comment 7*, U.N. Doc. E/C.12/1997/4 (1997). See, for example, excerpts of the Committee on Economic, Social and Cultural Rights' Concluding Observations on: Canada (1993 & 1998), Panama (1991), Philippines (1995), Nigeria (1998), and Dominican Republic (1994, 1996 & 1997) in Centre on Housing Rights and Evictions, *Sources 3: Forced Evictions and Human Rights, A Manual for Action* (Netherlands: Centre on Housing Rights and Evictions, 2d ed., 1999) at 16.

[27] Pamela Sayne, "Ideology as Law: Is There Room for Difference in the Right to Housing?" in Hemalata Dandekar ed., *Shelter Women and Development First and Third World Perspectives* (1992) 97, 99-100. See also, Pamela Sayne, *Housing Language, Housing Reality?* 11(2) Canadian Women Studies (1990).

[28] General Comment 4, *supra* note 25 at par. 6.

[29] *Ibid.*, at par. 7

[30] *Ibid.*, at pars. 7 and 9.

[31] *Ibid.*, at par. 7.

[32] *Ibid.*, at par. 8.

[33] *Ibid.*, at par. 12. According to this paragraph, a national housing strategy should define the objectives for the development of shelter conditions, identify the resources available to meet these goals and the most cost effective way of using them and set out the responsibilities and time frame for the implementation of necessary measures. Such a strategy should reflect extensive genuine consultation with, and participation by, all of those affected, including the homeless, the inadequately housed and their representatives.

[34] *Ibid.*, at par. 13.

[35] *Ibid.*, at par. 17.

[36] *Ibid.*, at par. 18.

[37] In fact, after an analysis of women's housing experiences and needs it might be agreed that at least some of the principles articulated in General Comment 4 are essential to women's housing rights.

[38] For an overview of some of these barriers see: Leilani Farha, "Women and Housing" in Kelly Askin and D. Koenig, eds., *Women and International Human Rights Law, Vol.1,* (New York: Transnational Publishers, 1999) 483.

[39] See for example, General Comment 4, *supra* note 25 at par. 17(c).

[40] See Appenidx for a chart listing the seven requirements of "adequate housing", the definition as it appears in the General Comment 4 and the elements omitted from women's perspectives.

[41] General Comment 4, *supra* note 25 at par. 8 (c) states:

> Personal or household financial costs associated with housing should be at such a level that the attainment and satisfaction of other basic needs are not threatened or compromised. Steps should be taken by States parties to ensure that the percentage of housing-related costs is, in general, commensurate with income levels. States parties

> should establish housing subsidies for those unable to obtain affordable housing, as well as forms and levels of housing finance which adequately reflect housing needs. In accordance with the principle of affordability tenants should be protected from unreasonable rent levels or rent increases by appropriate means. In societies where natural materials constitute the chief sources of building materials for housing, steps should be taken by States parties to ensure the availability of such materials.

[42] *Ibid.*, at par. 8 (d).

[43] *Ibid.* at par 8 (e) which states:

> Disadvantaged groups must be accorded full and sustainable access to adequate housing resources. Thus, such disadvantaged groups as the elderly, children, the physically disabled, the terminally ill, HIV-positive individuals, persons with persistent medical problems, the mentally ill, victims of natural disasters, people living in disaster prone areas and other groups should be ensured some degree of priority consideration in the housing sphere.

[44] See for example the Committee's Concluding Observations on Cameroon, U.N. Doc. E/C.12/1/Add.40 (1999).

[45] UN Doc. E/C.12/1/Add.31 (1998).

[46] Jane Darke, "Women and the Meaning of Home" in Rose Gilroy and Roberta Woods eds., *Housing Women* (London: Routledge, 1994) 11 at 11.

[47] For a reformulation of all of the elements of adequacy see Appendix.

[48] For example, such letters have been issued to: Israel, Nigeria, Dominican Republic, and Philippines.

[49] For example, Korea, Philippines, Dominican Republic, Panama, and Israel.

[50] The Committee has visited, for example, Panama and the Dominican Republic.

[51] Committee on Economic, Social and Cultural Rights, *General Comment 7, supra* note 26.

[52] *Ibid.*, at par. 4. Other definitions of forced eviction in international legal documents are not limited by the phrase "without the provision of, and access to, appropriate forms of legal or other protection". See for example, UN Fact Sheet No. 25 on Forced Evictions which states: "The practice of forced eviction involves the involuntary removal of persons from their homes or land, directly or indirectly attributable to the State" available on: <www.unhchr.ch/html/menu6/2/fs25.htm>. Also, the definition in the *Comprehensive Human Rights Guidelines on Development-Based Displacement*, UN Doc. E/CN.4/Sub.2/1997/7, provides the following definition:

> [A]cts and/or omissions involving the coerced and involuntary removal of individuals , groups and communities from their homes and/or lands and common property resources they occupy or are dependent upon, thus eliminating or limiting the possibility of an individual, group or community residing or working in a particular dwelling, residence or place.

[53] Gen Comment 7, *supra* note 26 at par. 5.

[54] *Ibid.*, at par. 9.

[55] *Ibid.*, at par. 10.

[56] *Ibid.*, at par. 14.

[57] *Ibid.*, at par. 18.

[58] *Ibid.*, at par. 21, drawing on UN Doc. E.C.12/1990/8, Annex IV, Committee on Economic, Social and Cultural Rights Revised Reporting Guidelines for State Parties.

[59] General Comment 7, *supra* note 26 at par. 10. It is questionable whether it is appropriate to list women alongside children, youth, older persons because, as discussed below, there is reason to believe that women suffer more than any other group and bear disproportionate responsibility for the effects of forced eviction on family matters.

[60] This General Comment was being negotiated when I first started working on women's housing rights at the international level, in 1997. I did speak with several members of the CESCR about including a reference to domestic violence somewhere in the Comment and even provided suggested text. This suggestion was not taken-up.

[61] As cited in General Comment 7, *supra* note 26 at par. 16.

[62] Darya Farha, *Eviction Women List-Serve* correspondence (27 October 2000, on file with author). The Eviction Women list serve was hosted for 8 weeks in 2000. It was co-sponsored by the Women's Housing Rights Programme at the Centre on Housing Rights and Evictions and the University of Toronto, Faculty of Law, Women's Human Rights Resources.

[63] SERAC, "Women and Forced Eviction in Nigeria" (forthcoming, 2001, on file with author).

APPENDIX A: RE/CONCEIVING "ADEQUACY" ELEMENTS

ELEMENT	DEFINITION	WOMEN'S PERSPECTIVES
Security of Tenure	All persons should possess a degree of security of tenure which guarantees legal Protection against forced eviction, harrassment and other threats. State parties should confer legal security of tenure upon those persons and households currently lacking such protection in genuine consultation with affected persons and groups	*women lack security of tenure more than other groups *household/domestic violence perpetrated primarily vs. women causes insecure tenure *the causes of forced eviction should include household/domestic violence, removal from the home because of discriminatory inheritance laws, customs, traditions
Availability of services materials, facilities and infrastructure	An adequate house must contain facilities essential for health, security, comfort and nutrition. All beneficiaries of the right to adequate housing should have sustainable access to natural and common resources, potable drinking water, energy for cooking, heating and lighting, sanitation and washing facilities, food storage, refuse disposal, site drainage and emergency services.	*the availability of these are particularly important to women given that women spend more time in the home than do men *for women it's not just sustainable access that's important, it's proximate access *in order for the availability of these to be ensured, women must be permitted to play a key role in community planning, development and housing *the availability of these are dependent on women's rights in and access to land, property and housing

ELEMENT	DEFINITION	WOMEN'S PERSPECTIVES
Affordable	Personal or household financial costs associated with housing should be at such a level that the attainment and satisfaction of other basic needs are not threatened. Steps should be taken by States parties to ensure the % of housing-related costs is commensurate with income levels. States parties should establish housing subsidies for those unable to obtain affordable housing. Tenants should be protected from unreasonable rent levels or rent increases.	*as the poorest group in society arrears and evictions are of particular concern to women *to determine household income levels must look at the income actually available to the woman in the house. Cannot presume that male "head of household" income is reaching all members of the household *housing subsidies must be allocated in a manner that does not discriminate against women and that gives priority to particular groups of women *male landlords often exploit women by demanding sexual "favours" to avoid rent increases and eviction
Habitable	Adequate housing must provide the inhabitants with adequate space and protecting them from cold, damp, heat, rain, wind or other threats to health, structural hazards and disease. The physical safety of occupants must be guaranteed as well. The Committee encourages States parties to apply the Health Principles of Housing which view housing as the environmental factor most associated with disease conditions. Inadequate housing and living conditions are invariably associated with higher mortality and morbidity rates.	*health should go beyond physical health & include mental health - and women should be afforded a guarantee of physical and mental safety in the house (domestic violence being the key concern here) *women need to be involved in training and education around disease control - not just male heads of households, but men need to be trained to contribute *women are susceptible to HIV/AIDS because of male partner's relationship with other other women. Men need to take responsibility for their role in the spread of AIDS

ELEMENT	DEFINITION	WOMEN'S PERSPECTIVES
Accessibility	Adequate housing must be accessible to those entitled to it. Disadvantaged groups must be accorded full and sustainable access to adequate housing resources. Thus, such disadvantaged groups as the elderly, children the physically disabled, the terminally ill, HIV positive individuals, persons with persistent medical problems, the mentally ill, victims of natural disasters, people living in disaster-prone areas and other groups should be ensured some degree of priority consideration in the housing sphere. Both housing law and policy should take fully into account the special housing needs of these groups. Within many States parties increasing access to land by landless or impoverished segments of the society should constitute a central policy goal. Discernible governmental obligations need to be developed aiming to substantiate the right of all to a secure place to live in peace and dignity, including access to land as an entitlement.	*women as the largest, most disadvantaged group omitted *women who have suffered household or domestic violence omitted *women as the most landless group across the world. The link between landlessness and discriminatory inheritance rights and social pressures which keep women from claiming their rights to inheritance

ELEMENT	DEFINITION	WOMEN'S PERSPECTIVES
Location	Adequate housing must be in a location which allows access to employment options, health care services, schools, child-care centres and other social facilities. This is both true in large cities and in rural areas where the temporal and financial costs of getting to and from places of work can place excessive demands upon the budgets of poor households. Housing should not be built on polluted sites nor in immediate proximity to pollution sources that threaten the right to health of the inhabitants.	*employment options for women often means arable land *women require proximate access esp. to health care facilities *near schools
Culturally Adequate	The way housing is constructed, the building materials used and the policies supporting these must appropriately enable the expression of cultural identity and diversity of housing.	*women are almost always excluded from housing design, the construction of housing *cultural identity is often male defined